Supreme Court, U.S.
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ALEXANDER L. STEVAS,

No. 83-158.

In the Supreme Court of the United States.

OCTOBER TERM, 1983.

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE: RICHARD A. ZINSER, JOSEPH LYONS, ALBERT J. SMITH, CAROLYN FITZGERALD, PETER C. HAYES, MEMBERS OF THE CHARLESTOWN SCHOOL COMMITTEE: KENNETH O. BRIGHTMAN, RANDALL COLLINS, BLANCHE CYBULSKI, NANCY KENYON, LESLIE CHAMBERLAIN, ANDREW LAVIANO, THEODORE SELESIONA, WILLIAM FLYNN, THOMAS RAMBSEY, HARRIET WARD, AUGUSTA FINKELSTEIN, ALBERT B. LYONS, THE CHARIHO REGIONAL HIGH SCHOOL DISTRICT COMMITTEE,

PETITIONERS,

v.

DR. THOMAS C. SCHMIDT, AS COMMISSIONER OF EDUCATION OF THE STATE OF RHODE ISLAND, DR. WILLIAM P. ROBINSON, JR., AS ASSOCIATE COMMISSIONER OF EDUCATION, ANTHONY SOLOMON, AS GENERAL TREASURER OF THE STATE OF RHODE ISLAND, MEMBERS OF THE BOARD OF REGENTS: ALBERT E. CARLOTTI, ANDREW R. BONTE, DR. AUGUSTINE CAPOTOSTO, HENRY J. NARDONE, BERNARD V. BUONANNO, JOHN J. LYNCH, JOHN J. KANE, MARY P. LYONS, NORMA B. WILLIS, RICHARD ZORABEDIAN, DONNA MARIE PELUSO, REP. THOMAS A. LAMB, SEN. ROBERT J. MCKENNA, J. JOSEPH GARRAHY, AS GOVERNOR OF THE STATE OF RHODE ISLAND,

RESPONDENTS.

Brief in Opposition to Petition for a Writ of Certiorari.

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Questions Presented.

I. Whether the circuit court erred when it found that the establishment clause of the United States Constitution does not mandate that public school districts expend on a per student basis absolutely equal monetary amounts for sectarian school busing as for public school busing.

II. Whether the circuit court erred when it found the absence of evidence that the challenged transportation statute actually favored sectarian school students.

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RESPONDENTS.

Brief in Opposition to Petition for a Writ of Certiorari.

Statement of the Case.

The factual predicate of petitioners' constitutional argument is that it costs more on a per student basis to bus sectarian

school students across public school district boundaries than it does to bus public school students within public school district boundaries. The facts which form this predicate as presented in petitioners' statement of the case contain numerous omissions. Respondents present the following statement of the case so that the complete factual setting of this case can be considered by this Supreme Court.

Rhode Island public school districts are obligated to bus public and private elementary and secondary school students to schools both-in district, R.I. Gen. Laws 16-21.1, and out-of-district, R.I. Gen. Laws 16-21.1-1, *et seq*. Petitioners challenge cross-district regional school busing only.

Currently Rhode Island public school districts provide cross-district busing for children who attend out-of-district vocational schools, special education schools, cooperative programs, religiously affiliated regional schools and non-religiously affiliated regional schools. In 1979-1980 the Educational Statistics Unit of the Rhode Island Department of Education conducted a statewide survey of public school districts pursuant to the district court's request in this case to determine the numbers and costs of busing students intra-district and cross-district. The survey revealed that for the 1978-1979 school year the following numbers and classes of students were bused cross district:

1,417	Public vocational students (RA-2 and RA-5).
1,163	Public special education students (RA-2 and RA-6).
56	Public cooperative students (RA-2).
1,154	Religiously affiliated private school students (RA-3).
70	Non-religiously affiliated private school students (RA-3).

Plaintiff Jamestown and Charlestown School Committees and intervenor Chariho School Committee presently send public school students cross-district each school day to numerous public school districts. The Jamestown School Committee buses five (5) students to vocational programs in Newport, one special education student to Newport, and seven (7) special education students to North Kingstown and East Greenwich (RA. 12).[1] One special education student and at times his family are transported to New Hampshire at school committee expense (RA. 12). In fact all Jamestown High School students are bused cross-district to North Kingstown, because Jamestown does not operate its own high school (RA. 9). The Chariho School Committee presently buses fourteen (14) special education students cross-district to South Kingstown, Exeter, West Greenwich, the Warwick-Providence area, and New Haven, Connecticut (RA. 19). In 1978-1979 the Charlestown School Committee bused one special education student out-of-district (RA. 2). In addition in 1980-1981 the Chariho, Narragansett and South Kingstown public school districts instituted a cooperative fisheries program (RA. 22). The program is taught at a South Kingstown location (RA. 25). Thus, the Chariho school district must bus students cross-district to this program.

As indicated on Table I: "Public School Children Bused Outside the District 1978-1979" (RA. 2) compiled by the Department of Education, virtually every school district buses public school children outside the school district to vocational and special education schools. Some school districts such as Newport and Chariho operate their own in-district vocational

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[1] Respondents cite here and elsewhere to various depositions of school committee officials which were included as part of the trial record by agreement of the parties.

Excerpts of the depositions have been included in Respondents' Appendix (designated "RA").

school and do not bus vocational students cross-district. Thus, on any given day virtually every, if not every, school district in Rhode Island sends school buses cross-district to transport resident public school students to public schools located outside the district in which they reside.

Some school districts use combined intra-district and cross-district busing programs to reduce costs and more efficiently utilize buses. For instance in Johnston, Newport, Warwick and Coventry the same bus will, each day, make a trip picking up and dropping off in-district public and parochial school students. After the in-district trip another trip will be made picking up and dropping off out-of-district public and private school students, etc. (RA. 30, 43). In some instances buses used to transport special education students can be and are, used to transport non-special education students (RA. 23).

Even if one rejects the statewide cost data submitted by the respondents,[2] as apparently the district court did, the entire record of this matter shows that numerous public school students are now bused cross-district along with private sectarian and private non-sectarian school students.

Costs to bus cross-district vary widely among the various school districts. The Department of Education's survey showed that it costs an average of $8 more to bus religiously affiliated school students cross-district than to bus public school students intra-district. (Compare Table III (RA. 4) with Table II (RA. 3).) Costs to bus cross-district vocational school students and special education students on balance are much more than intra-district public and private school busing and cross-district private school busing. (Compare Table I (RA. 2) with Table II (RA. 3) and Table III (RA. 4).)

Petitioners do not challenge intra-district sectarian busing or cross-district special education, vocational, and cooperative

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[2] Petitioners submitted no statewide cost or school attendance data.

school busing. Petitioners only challenge the constitutionality of cross-district private school busing.[3] Such challenge is based on the predicate that cross-district regional school busing benefits only sectarian school students and costs more than intra-district public school busing. Such factual predicate is wrong as a matter of fact and irrelevant as a matter of law.

In the first instance, petitioners ignore the different costs incurred for constitutional intra-district busing. For the 1979-1980 school year the Warwick School District spent approximately $84 per student per year and $147 per student per year for intra-district public and private school busing respectively (RA. 38). For the 1979-1980 school year the Coventry School District spent approximately $82 per student per year and $139 per student per year for intra-district public and private school busing respectively (RA. 41-42, 44-45). Thus cost differentials between intra-district public school and intra-district private sectarian school busing already exist and are constitutional. *Everson* v. *Board of Education*, 330 U.S. 1 (1947). Petitioners do not explain why cost differentials between intra-district public and sectarian busing are not significant, while cost differentials between intra-district public busing and cross-district private busing are significant.

Secondly, petitioners' cost data for the Jamestown and Chariho school districts are inflated because the estimates do not consider the cost of cross-district regional school busing as part of a combined or intergrated in-district and cross-district busing program. For example, Jamestown currently has the capacity to bus 288 students to their regular public high school at North Kingstown High School of which approximately 216 seats are now occupied by public school students (RA. 9, 12-13). (The Jamestown School District has no high school.)

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[3] The same statute, R.I. Gen. Laws 16-21.1, *et seq.*, authorizes all cross-district busing.

Thus, Jamestown has the present capacity to bus cross-district to North Kingstown High School, the 22 Jamestown students who now attend the out-of-district sectarian, Monsignor Clarke regional school (RA. 9) at essentially no extra cost or at least the same cost incurred to bus public high school students. Monsignor Clarke is approximately fifteen miles from North Kingstown High School (RA. 13). Jamestown now buses five (5) vocational educational students out of district to the Newport public vocational school, Rogers High, a distance of approximately fifteen miles (RA. 15) at a cost of $400 per student per school year (RA. 10-11). Assuming that the 22 Monsignor Clarke students could be bused a similar distance at a similar cost from North Kingstown High School to Monsignor Clarke, the per student cost to bus to the out-of-district regional school would be greatly reduced. The above option, however, was not considered or costed by Jamestown (RA. 14). Jamestown based its estimated cost of $847 per student to bus the 22 Monsignor Clarke students on an entirely separate and independent cross-district busing program.

Similarly, Chariho estimated costs for busing 26 Chariho district residents (RA. 18) cross-district to the sectarian Monsignor Clarke regional school at a per student cost of 2.4 to 3.8 times higher than the cost to bus to in-district schools (Petitioners' Brief at 7). One cross-district busing option included transporting the 26 Monsignor Clarke students to the Chariho High School/vocational school as are all other in-district students. An additionally purchased or leased bus would then transport the students to Monsignor Clarke which is located in South Kingstown. Chariho, however, failed to consider the savings that could accrue by utilizing a South Kingstown bus which presently transports 42 South Kingstown vocational education students to the Chariho High School/vocational school (South Kingstown has no vocational school) to transport the 26 students to Monsignor Clarke on the buses' return trip

(RA. 24). The South Kingstown bus returns to South Kingstown each morning and could be utilized to transport the 26 Monsignor Clarke students thereby reducing busing costs (RA. 27).

Thirdly, petitioners make much of action taken by school committees to reduce school busing costs and service (Petitioners' Brief at 10-11). Petitioners, however, have not shown that service and cost reductions result from cross-district busing. Such reductions can be attributed to a number of factors, *e.g.*, increased gasoline prices and constitutional intra-district sectarian school busing. Petitioners claim that "The minimum distance requirements, however, do not apply to students attending St. Thomas School or the Cranston/Johnston regional school, both of which are Roman Catholic Regional Schools located outside the Town of Johnston." (Petitioners' Brief at 11.) This is simply wrong and the circuit court found to the contrary.

> The same criteria or remoteness, however, apply to public and private students alike in determining their eligibility for busing in the first place — that is, all students, public and sectarian, are eligible for busing only if they "live at such distances from the schools which they attend as to make it in practical or hazardous to require [them] to walk to school." § 16-21-1.1.

Members of the Jamestown School Committee v. *Schmidt*, 699 F.2d 1, 5 (1st. Cir. 1983); (A. 4).

Finally, petitioners' factual predicate does not support their legal claims because regional cross-district busing is available to, and utilized by, public and non-sectarian private school students. In Newport, non-sectarian private school students are bused cross-district to the non-sectarian regional New School (RA. 34). The South Kingstown, Narragansett and Chariho school districts operate a school of fisheries cooperative program and bus public students cross-district to

that program (RA. 28). Indeed petitioners have cited no instance where public school students were in fact denied busing cross-district to public schools.

Petitioners in this case thus seek to have this Supreme Court review in isolation a narrow segment of Rhode Island's overall school busing program, while acknowledging that the bulk of the program does not violate the United States's Constitution. Such a review will require this Court to make precise factual findings as to busing costs which the district court did not do and which the circuit court was unable to do because the record was not clear as to these costs.

Reasons for Denying the Writ.

I. Petitioners' Comparison of the Costs to Bus Sectarian Students Across Public School District Boundaries with the Costs to Bus Public Students Within Public School District Boundaries is Not Constitutionally Relevant Nor did the Petitioners Establish the Scope of such Costs so that the District and Circuit Courts could Accurately Compare Costs.

The first of petitioners' two-pronged constitutional argument is based on the premise "that the cost of transportation for students attending sectarian schools is, in fact, so disproportionate compared to the ordinary expense of public school transportation that the benefit accruing to sectarian institutions and sectarian school pupils has, in effect, provided susbstantial benefit and advancement to religious institutions" (Petitioners' Brief at 18).

Petitioners' premise fails because this Supreme Court has already ruled that disproportionate distribution of benefits is

not constitutionally significant. In addition, petitioners' cost data is inflated[4] and petitioners' logic would require a reversal of *Everson* v. *Board of Education*, 330 U.S. 1 (1947).

The circuit court rejected petitioners' argument because the evidence on cost was incomplete and did not support their position and because petitioners narrowly focused on cross-district sectarian student and intra-district public student busing rather than public and sectarian busing as a whole.

> The district court found that inter-district busing of sectarian students was more expensive than intra-district busing of regular public students, and that the statute had "the effect *in fact* of transferring a major cost of regionalization" from sectarian schools and sectarian students' parents to the taxpayers of Rhode Island. *Jamestown III*, *supra*, 525 F. Supp. at 1051. Because the evidence on cost was incomplete, however, and the method of calculation unexplained, the district court made no finding as to the precise difference in cost between public and sectarian student busing. Since the Supreme Court's decisions permit some inequality, the district court's general finding of disparity is insufficient for us to hold the statute invalid on the present record on grounds of cost. We also question the propriety of comparing int*ra*-district busing of public students with int*er*-district busing of sectarian students: if sectarian students may constitutionally be bused at public expense to their schools, wherever located, the relevant comparison would

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[4] Respondents do not agree with the accuracy of petitioners' cross-district busing cost data for the Jamestown and Chariho School Districts. Such cost data is inflated because neither school district considered busing options which would have decreased costs. See Respondents' statement of the case at 5-6.

> seem to be between the relative costs per student of public and sectarian busing *as a whole*.

Members of the Jamestown School Committee v. *Schmidt*, *supra* at 10-11 (A. 16) (emphasis in original).

Subsequent to the circuit court's decision, this Supreme Court addressed the constitutional significance of empirical data such as busing costs in *Mueller* v. *Allen*, ____ U.S. ____, 103 S.Ct. 3062 (1983).

> We would be loath to adopt a rule grounding the constitutionality of a facially neutral law on annual reports reciting the extent to which various classes of private citizens claimed benefits under the law. Such an approach would scarcely provide the certainty that this field stands in need of, nor can we perceive principled standards by which such statistical evidence might be evaluated. Moreover, the fact that private persons fail in a particular year to claim the tax relief to which they are entitled — under a facially neutral statute — should be of little importance in determining the constitutionality of the statute permitting such relief.
>
> . . . [W]hatever unequal effect may be attributed to the statutory classification can fairly be regarded as a rough return for the benefits . . . provided to the state and all taxpayers by parents sending their children to parochial schools. In the light of all this, we believe it wiser to decline to engage in the type of empirical inquiry into those persons benefited by state law which petitioners urge.

Id. at 3070.

Indeed most of the beneficiaries of the Minnesota tax deduction scheme were parents of sectarian school students. Ninety-

six percent of the students in private schools attended sectarian schools while the petitioners in that case alleged that most parents of public school children incurred only negligible benefits under the tax deduction scheme. *Id.* at 3070.

Thus, *Mueller* makes it clear that greater student per year costs for cross-district busing as compared to intra-district public school busing are not, in and of themselves, constitutionally significant, because a constitutional holding should not be based on empirical data which may change from year to year. *See also, Springfield School District* v. *Pennsylvania Department of Education*, 483 Pa. 539, 397 A.2d 1154 (1978), *appeal dismissed for want of a substantial federal question sub nom. School District of Pittsburgh* v. *Pennsylvania Department of Education*, 443 U.S. 901 (1979); *Pequea Valley School District* v. *Pennsylvania Department of Education*, 483 Pa. 539, 397 A.2d 1154 (1978), *appeal dismissed for want of a substantial federal question*, 443 U.S. 901 (1979); and *McKeesport Area School District* v. *Pennsylvania Department of Education*, 38 Pa. Comm. 290, 392 A.2d 912 (1978), *appeal dismissed for want of a substantial federal question*, 446 U.S. 970 (1980).

Indeed, petitioners' logic regarding disparate busing costs cannot distinguish cross-district busing from intra-district busing. If cost differentials are constitutionally significant, the constitutionality of intra-district sectarian school busing, which was upheld in *Everson* v. *Board of Education*, *supra*, must be questioned since the trial record shows significant costs differentials between intra-district public and private school busing. See respondents' statement of the case, *supra* at 5.

Petitioners claim that cross-district busing provides "substantial benefit and advancement to religious institutions" and that the financial burden of providing cross-district busing "has necessitated or would necessitate a cut back in educa-

tional services or transportation provided to public school students" (Petitioners' Brief at 18), is unsupported in the record. Petitioners did not prove their case. The circuit court further found that:

> Without precise figures on the relevant costs, the effect of the statute on the regionalization of sectarian schools is conjectural. There was no evidence that any church school was built or regionalized to take advantage of the law, or that transportation region lines were gerrymandered to give a hidden subsidy to existing church schools. Moreover, the current law does not permit church schools to expand indefinitely the area from which they will accept students. A sectarian school may if it wishes enroll students from all five transportation regions, but under current law, it cannot, absent special circumstances, require the public to pay for the transportation of students from outside the one region in which it is located — a region fixed by law and which the school is powerless to expand.

Members of the Jamestown School Committee v. *Schmidt*, *supra* at 11; (A. 17).

Petitioners have not claimed that the above circuit court findings are in error. The consequence of an incomplete record, of course, must be borne by petitioners who must prove their case.

Thus, the trial record does not indicate nor do petitioners show that the circuit court ignored evidence that shows that Rhode Island's transportation scheme distributes benefits in an unconstitutional manner. The benefits provided by the transportation scheme are within the bounds set by *Mueller* v. *Allen*, *Everson* v. *Board of Education* and *Springfield School District* v. *Pennsylvania Department of Education*.

II. Petitioners did Not Present Evidence Showing that the Practical Effect of Cross-District Regional Busing Favors Sectarian School Students.

The second prong of petitioners constitutional argument contends that Rhode Island General Law 16-21.1-1, *et seq.* is not *facially* neutral. Petitioners rest their argument on the statutory language which provides that a public school student may "attend a public school . . . outside of [the student's] city or town" only if the local school committee finds that such school "provides a program or curriculum not available within the city or town in which the pupil resides, as authorized by [Rhode Island General Laws] Section 16-3.1-1" (Cooperative Service Among School Districts). Rhode Island General Laws § 16-21.1. Private regional school students do not have to obtain school committee approval.

Petitioners, however, have incorrectly stated in their statement of the case that intra-district eligibility requirements for busing are not applicable to cross-district busing.[5] The circuit court found otherwise:

> The same criteria or remoteness, however, apply to public and private students alike in determining their eligibility for busing in the first place — that is, all students, public and sectarian, are eligible for busing only if they "live at such distances from the schools which they attend as to make it impractical or hazardous to require [them] to walk to school." [Rhode Island General Laws] § 16-21.1-1.

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[5] Petitioners state: "The minimum distance requirements, however, do not apply to students attending St. Thomas School or the Cranston/Johnston Regional School, both of which are Roman Catholic regional schools located outside the Town of Johnston." (Petitioners' Brief at 11.)

Members of the Jamestown School Committee v. *Schmidt*, *supra* at 5; (A. 4).

In addition, cross-district busing of both private and public school students is limited to the boundaries of the region in which they reside. The statute creates five geographic regions which are distinct from school districts.

Neither the circuit or district court found that the statutory transportation scheme *actually* favors sectarian school students. The circuit court found:

> There was no evidence that any church school was built or regionalized to take advantage of the law, or that transportation region lines were gerrymandered to give a hidden subsidy to existing church schools. Moreover, the current law does not permit church schools to expand indefinitely the area from which they will accept students. A sectarian school may if it wishes enroll students from all five transportation regions, but under current law, it cannot, absent special circumstances, require the public to pay for the transportation of students from outside the one region in which it is located — a region fixed by law and which the school is powerless to expand.

Id. at 11; (A. 17).

As Judge Breyer stated in his concurring circuit court opinion in this matter:

> The matter would have been very different had the district court found, as a *practical* instead of a *theoretical* matter, that Catholic schools obtain a disproportionate benefit because they serve students from regions that are significantly larger than the local school districts. But the record suggests the contrary. The defendants offered evidence which suggests that no matter how the problem

> is viewed, the Catholic schools receive no practical advantage. *Id.* at 14-15; (A. 24) (emphasis in original).

Petitioners, in fact, presented no evidence that showed that public school students were denied cross-district transportation benefits. For instance, the South Kingstown, Narragansett and Chariho public school districts operate a school of fisheries cooperative program and bus their students cross-district to that program (RA. 25). Also the City of Newport buses students cross district to the non-religiously affiliated regional New School (RA. 34). Thus the record shows that cross-district transportation benefits are, in fact, afforded to public, private, sectarian, and non-sectarian school students.

The district court did not base its invalidation of the statute on a finding of practical favoritism. The district court found a theoretical favoritism because sectarian school students do not have to obtain school committee approval for cross-district busing. But as Circuit Judge Breyer noted in his concurring opinion:

> [T]his fact is irrelevant for the purposes of finding a *theoretical* favoritism, for the "school districts" that the court discussed are *public* school districts, the boundaries of which were drawn with *public* schools rather than parochial schools in mind. It is hardly surprising that each Catholic school is not located in the center of each *public* school district. A program that seeks approximately equal or even absolutely identical treatment for Catholic and public school students will likely transport some Catholic school students across public school district boundaries. Presumably, some public school students will be taken across Catholic school boundaries (if such boundaries exist) as well. Is is simply not possible for a

> *theoretical* inequality to arise only from the fact that busing will take some private school students across public school boundaries.

Id. at 14; (A. 24) (emphasis in original).

The district court's decision is necessarily based on the assumption that school district boundaries are constitutionally significant. Such assumption has not been adopted in other cases. *Springfield School District* v. *Pennsylvania Department of Education*, *supra*; *Cromwell Property Owners Association* v. *Toffolon*, 495 F. Supp. 915 (D.Ct. 1979). Nor did this Court's decision in *Everson* ascribe importance to school district boundaries even though *Everson* involved some cross-district busing. *Jamestown School Committee* v. *Schmidt*, *supra* at 7, 17; (A. 9, 29). Indeed the state Legislature could validly change at any time public school district boundaries. It is unlikely that only the theoretical chance that a boundary change would benefit sectarian schools would be sufficient to invalidate a legislative boundary change on Establishment Clause grounds.

What is important is that the transportation scheme promote the welfare of the general public and be available to all students. Both the district and circuit Courts found that the transportation scheme had a secular purpose, *i.e.*, promotion of the health, safety and welfare of students. The record shows that private, public, sectarian and non-sectarian school students benefit from cross-district school busing. The district court found no evidence of *actual* favoritism nor does the record contain such evidence. Thus, the transportation scheme created by Rhode Island General Laws 16-21.1-1 *et seq.* falls well within the Establishment Clause decisions propounded by this Supreme Court.

Given the above factual and analytic background, the circuit court's reliance on this Supreme Court's summary dismis-

sal of the *Springfield School District* and *Pequea Valley School District* v. *Pennsylvania Department of Education*, *supra*, cases, *id.* at 7-8; (A. 10-11), cannot be considered blind adherance to the letter of an unargued Supreme Court case. As Judge Breyer noted in his concurring circuit court opinion, sound independent reasons exist for upholding the Rhode Island transportation statute. These reasons together with the fact that the precise issue raised by petitioners was brought before this Court and dismissed for want of a substantial federal question, *Pequea Valley School District*, *supra*; *see*, *Members of the Jamestown School Committee* v. *Schmidt*, *supra* at 8, (A. 11), require that this petition for writ of certiorari be denied and dismissed.

Conclusion.

For the reasons set out above the petition for a writ of certiorari should be denied and dismissed.

Respectfully submitted,

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TABLE I Public School Children Bus Outside the District 1978-1979

	Vocational Schools		Special Ed. Programs		Regional Schools		Cooperative Programs		TOTAL	
	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost
Barrington	40	$ 254	6	$1,433	—	$ —	—	$ —	46	$ 407
Bristol	19	383	25	1,739	—	—	—	—	44	1,154
Burrillville	73	261	51	1,814	—	—	—	—	124	900
Central Falls	65	98	22	716	—	—	—	—	87	254
Charlestown	—	—	1	12,044	—	—	—	—	1	12,044
Coventry	47	169	19	1,263	20	130	—	—	86	401
Cranston	31	297	20	1,053	—	—	—	—	51	593
Cumberland	75	80	111	682	2	1,000	6	333	194	442
East Greenwich	37	301	23	3,190	—	—	—	—	60	1,409
East Providence	1	162	40	2,140	—	—	—	—	41	2,092
Foster	15	1,310	28	1,079	—	—	—	—	43	1,160
Glocester	24	458	28	1,719	—	—	—	—	52	1,137
Hopkinton	—	—	9	3,067	—	—	—	—	9	3,067
Jamestown										
Johnston	53	176	22	1,544	—	—	—	—	75	578
Lincoln	40	116	9	2,021	—	—	—	—	49	466
Little Compton	10	292	15	2,099	143	292	—	—	178	258
Middletown	31	43	6	2,443	—	—	—	—	37	432
Narragansett	27	646	26	1,966	—	—	6	57	59	1,168
Newport	—	—	11	480	—	—	—	—	11	480

New Shoreham	—	—	—	—	—	—	—	—	—	—
North Kingstown	41	566	94	1,524	—	—	—	—	135	1,233
North Providence	92	128	105	991	—	—	—	—	197	588
North Smithfield	72	158	43	1,509	—	—	—	—	115	663
Pawtucket	200	169	28	1,657	—	—	—	—	228	352
Portsmouth	26	294	9	936	—	—	44	458	79	459
Providence	—	—	65	115	—	—	—	—	65	115
Richmond	—	—	12	132	—	—	—	—	12	132
Scituate	21	1,000	15	1,881	—	—	—	—	36	1,367
Smithfield	46	101	19	2,289	—	—	—	—	65	740
South Kingstown	45	240	35	2,857	—	—	—	—	80	1,385
Tiverton	43	359	19	1,552	—	—	—	—	62	725
Warren	38	213	31	912	—	—	—	—	69	527
Warwick	6	1,167	50	790	53	306	—	—	109	575
Westerly	73	215	37	1,548	—	—	—	—	110	663
West Warwick	75	50	45	942	—	—	—	—	120	384
Woonsocket	26	346	56	1,278	—	—	—	—	82	983
Exeter-West Greenwich	25	158	16	2,007	—	—	—	—	41	880
Chariho	—	—	12	4,127	—	—	—	—	12	4,127
Foster-Glocester	—	—	—	—	—	—	—	—	—	—
STATE	1,417	$ 354	1,163	$1,397	218	$ 287	56	$ 402	2,864	$ 702

Public and Nonpublic Transportation Survey

TABLE II. Nonpublic School Children Bused Outside the District 1978-1979

	Parochial Religiously Affiliated Schools		Independent/Non-Religious Schools		TOTAL	
	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost
Barrington	—	—	—	—	—	—
Bristol	—	—	—	—	—	—
Burrillville	—	—	—	—	—	—
Central Falls	—	—	—	—	—	—
Charlestown	—	—	—	—	—	—
Coventry	20	1,296**	—	—	20	1,296
Cranston	20	310	—	—	20	310
Cumberland	8	188	1	2,000	9	389
East Greenwich	—	—	—	—	—	—
East Providence	—	—	2	1,995	2	1,995
Foster	—	—	—	—	—	—
Gloucester	—	—	—	—	—	—
Hopkinton	—	—	—	—	—	—
Jamestown						
Johnston	164	149	—	—	164	149
Lincoln	19	244	21	2,430	40	1,392
Little Compton	—	—	—	—	—	—
Middletown	157	50	—	—	157	50
Narragansett	180	69	—	—	180	69

Newport	127	94	46	94	173	94
New Shoreham	—	—	—	—	—	—
North Kingstown	75	156	—	—	75	156
North Providence	181	86	—	—	181	86
North Smithfield	48	66	—	—	48	66
Pawtucket	28	275	—	—	28	275
Portsmouth	116	108	—	—	116	108
Providence	1	54	—	—	1	54
Richmond	—	—	—	—	—	—
Scituate	10	186	—	—	10	186
Smithfield	—	—	—	—	—	—
South Kingstown	—	—	—	—	—	—
Tiverton	—	—	—	—	—	—
Warren	—	—	—	—	—	—
Warwick	—	—	—	—	—	—
Westerly	—	—	—	—	—	—
West Warwick	—	—	—	—	—	—
Woonsocket	—	—	—	—	—	—
Exeter-West Greenwich	—	—	—	—	—	—
Chariho	—	—	—	—	—	—
Foster-Glocester	—	—	—	—	—	—
STATE:	1,514	$108	70	$876	1,224	$152

Prepared by Educational Statistics Unit, R. I. Department of Education

**This is a typographic error. Coventry out of district cost to bus religiously affiliated school students was $129.6/stu/yr. (See Denning, p. 54).

Public and Nonpublic Transportation Survey 1978-1979

TABLE III. Public School and Religious — School Children Bused Within the District

	Public Schools		Religious Schools	
	No. of Students	Per Pupil Cost	No. of Students	Per Pupil Cost
Barrington	1,884	$63	80	$127
Bristol	1,788	91	282	92
Burrillville	2,478	92	74	90
Central Falls	66	175	—	—
Charlestown	472	153	—	—
Coventry	3,460	82	445	139
Cranston	5,247	124	368	155
Cumberland	6,000	50	120	75
East Greenwich	1,360	115	92	97
East Providence	3,762	112	628	87
Foster	825	132	—	—
Glocester	1,625	91	—	—
Hopkinton	870	139	—	—
Jamestown				
Johnston	3,296	149	419	149
Lincoln	2,385	100	—	—
Little Compton	370	72	—	—
Middletown	3,250	52	67	50
Narragansett	1,761	109	—	—

Newport	1,840	94	236	94
New Shoreham	71	141	—	—
North Kingstown	3,501	60	—	—
North Providence	1,301	101	—	—
North Smithfield	2,077	108	—	—
Pawtucket	1,123	284	560	195
Portsmouth	2,529	70	96	80
Providence	3,178	152	703	59
Richmond	525	118	—	—
Scituate	1,700	84	—	—
Smithfield	2,508	65	162	113
South Kingstown	2,400	83	220	227
Tiverton	2,613	83	—	—
Warren	1,134	55	37	55
Warwick	7,777	154	1,128	86
Westerly	2,248	63	173	63
West Warwick	2,421	66	551	61
Woonsocket	2,360	65	690	52
Exeter-West Greenwich	1,400	158	—	—
Chariho	1,800	170	—	—
Foster-Glocester	—	—	—	—
STATE:	85,405	$100	7,131	$102

Prepared by Educational Statistics Unit, R. I. Department of Education

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, et al.	)	
v.	)	C.A. No. 77-0511
DR. THOMAS SCHMIDT, et al.	)	

SUPPLEMENTAL AGREED STATEMENT OF FACTS

A. Dr. Arthur Pontarelli is the Acting Commissioner of Education of the State of Rhode Island.

B. Pursuant to "The Education Act of 1981," The Board of Governors for Higher Education and Board of Regents for Elementary and Secondary Education have succeeded to the authorities and responsibilities of the former Board of Regents for Education.

C. Enrollment for the Rhode Island public schools was 148,343 for the Fall of 1980 and 154,098 for the Fall of 1979.

D. Enrollment for the Catholic Diocesan schools was 23,663 for the Fall of 1980 and 23,738 for the Fall of 1979.

E. Enrollment for independent schools was 4,515 for the Fall of 1980 and 4,305 for the Fall of 1979.

F. Approximately 85% of the children attending Rhode Island non-public schools attend sectarian schools operated by religious bodies which provide in part religious education.

G. For the 1978-79 school year approximately 1,417 students were bused out of their communities to regional vocational schools. The number of students bused out of their communities to regional vocational schools will be substantially similar for the 1980-1981 school year.

H. For the 1978-79 school year approximately 1,163 students were bused out of their communities to Special Education Programs. The number of students will be substantially similar for the 1980-1981 school year.

APPROVED BY:

AMATO DeLUCA, ESQUIRE
Attorney for Plaintiff

DANIEL J. SCHATZ
Special Assistant
Attorney General
Attorney for Defendant,
COMMISSIONER OF EDUCATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, et al	
VS	C.A. No. 77-0511
DR. THOMAS C. SCHMIDT, et al	

DEPOSITION OF ALFRED J. LaMARCHE, a witness in the above-entitled cause, taken on behalf of the defendants, pursuant to notice, before Jeanne St. Hilaire, Notary Public in and for the State of Rhode Island, at the Department of Attorney General, 72 Pine Street, Providence, Rhode Island, on Tuesday, December 16, 1980, at 3 p.m.

APPEARANCES:

FOR THE PLAINTIFFS. . . .DANIEL J. SCHATZ, ESQ.
SPECIAL ASSISTANT ATTORNEY GENERAL

FOR THE DEFENDANTS. . . .REVENS & DeLUCA
BY: AMATO A. DeLUCA, ESQ.

FOR DEFENDANTS
JOSLYN SISSON and
LILLIAN TOSCO. . . . .JOSEPH E. MARRAN, JR., ESQ.

ALFRED J. LaMARCHE

Being duly sworn, deposes and testifies in the following manner:

DIRECT EXAMINATION BY MR. DeLUCA

Q. Would you tell us your full name?
A. Alfred J. LaMarche.
Q. Where do you live?
A. Westerly, Rhode Island.
Q. And Mr. LaMarche, are you employed?
A. Yes.
Q. By whom are you employed?
A. Jamestown School Department.
Q. What position are you employed by the Jamestown School Department?
A. Superintendent of schools.
Q. How long have you been employed as the superintendent of schools for the Jamestown School Department?
A. Since August 20, 1979.
Q. Could you tell us, Mr. LaMarche, how many public schools are within the town of Jamestown boundaries?
A. One.
Q. And what type of school — what are the grades of that school?
A. Kindergarten through eight.

. . .

A. All right. I'm going to estimate around 80 to 85. You want me to break that down?
Q. Yes. How many are transported outside of Jamestown, if any?
A. About 29 to 30 are transported out of Jamestown.
Q. How are they transported out of Jamestown?

A. Well, about twenty of them are senior-high age youngsters who go to North Kingstown High but who for part of the day are given special education help in what is called a resource room with a resource teacher.

Q. If I can stop you there, now, you do not have a high school in Jamestown, is that correct?

A. Correct.

Q. So all of your students are transported to the North Kingstown High School to be educated, is that correct?

A. All our grade 9 through 12 students, yes.

Q. You pay the Town of North Kingstown the cost per pupil, is that correct, sir?

A. Yes, sir.

Q. You pay for the cost of transportation yourself, is that right?

A. Correct.

. . . . . .

MR. MARRAN. That is a wrong assumption.

Q. Let me ask you, have you attempted to determine how many students would request — have you determined how many students would request transportation to the Monsignor Clark Regional School from the town of Jamestown?

A. No, I haven't.

Q. Have you made any attempt to determine right now how many students that live in Jamestown attend the Monsignor Clark Regional School?

A. Yes, 22.

Q. And have you made a determination, or have you computed, assuming those 22 students wanted transportation to the Monsignor Clark School, what it would cost to send those students to the Monsignor Clark School?

A. Yes.

Q. And do you have in front of you a summarization of the costs and different alternative methods of transportation, is that correct?

A. Yes, sir.

Q. I show you these documents and ask you if you recognize them?

A. Yes, this is the memorandum that I prepared for . . .

. . . . . .

students that attended North Kingstown High is 196?

A. Yes.

Q. What is the estimated cost per month?

A. $4,072.

Q. What is the estimated cost per pupil per month?

A. $20.77.

Q. At the Jamestown Elementary School you have 245 students being transported to the school and the estimated cost per month?

A. $4,072. It's an estimate, and we have less distance to travel to take children to Jamestown, but we have a few more students to transport than before, but we estimated the same as what we're spending for the North Kingstown High students.

Q. What is the cost per month?

A. It figures out to $16.62.

Q. You have transportation costs to Rogers High School for five students?

A. Yes.

Q. What is that for?

A. These are Jamestown youngsters who are enrolled in a vocational educational program and it is a kind of a vocational program that is not offered at North Kingstown High, so we have an agreement with Newport for them to attend Rogers.

Q. What is the estimated cost per month for transporting those five students?

A. $200.

Q. And the estimated cost per pupil per month?

A. $40.

Q. You've already testified that you have one student that goes to the Maher Center?

A. Yes.

Q. And you said that you pay the Maher Center for the transportation?

A. No. We use a private car, the parent as a matter of fact, and we reimburse the parent on a mileage basis.

Q. How much is that per month?

A. It comes to $65 a month.

Q. And the cost of Crotchet Mountain which is in New Hampshire, have you estimated the cost of transportation?

A. Yes.

Q. What is that?

A. That is $350 a month.

Q. You send seven special education children to North Kingstown and East Greenwich on a minibus?

. . . . . .

present budget to provide transportation, is there any other alternative that you could utilize in order to obtain the money to provide the transportation?

Mr. MARRAN. Objection.

A. Not to my knowledge.

Q. Could you go back to the town and request additional monies from the taxpayers?

Mr. MARRAN. Objection.

A. I don't know, Mr. DeLuca, because I'm rather new there.

Q. You don't know; that's fine. You don't know.

Mr. DeLUCA. I don't believe I have any further questions unless you want to see the budget. Mr. LaMarche has the budget.

CROSS-EXAMINATION BY MR. SCHATZ

Q. Mr. LaMarche, how many students are bused by the Jamestown School District to North Kingstown Senior High School?

A. 196.

Q. And are those the only public school students that are bused outside the district?

A. No.

Q. What other public school students are bused outside?

A. We bus five students to Rogers High School in Newport. And we bus some special education children outside of Jamestown.

Q. Could you tell me again, please, how many special education students?

A. We bus seven children out of the school department's own minibus to North Kingstown and East Greenwich, all in one trip, and we transport a youngster to the — for the special education to the Maher Center in Newport, and we pay the transportation costs of the youngster who because of his educational needs is periodically transported from Jamestown to New Hampshire, and his family is sometimes even transported.

Q. What is the capacity of the buses that the Jamestown School District contracts for?

A. Seventy-two.

Q. So you have four buses that transport students?

A. Yes, sir.

Q. And four times 72 is, by my arithmetic, 288.

A. Yes.

Q. So, you have room now under your present busing schedule to bus 288 students to North Kingstown Senior High School?

A. Yes.

Q. Do you know how far from North Kingstown Senior High School Monsignor Clark is?

A. No, I haven't systematically measured it.

Q. Do you have an estimate?

A. I would estimate from North Kingstown High to Monsignor Clark, I would estimate 15 miles, but that's my estimate. Because North Kingstown High is going in the opposite direction of Monsignor Clark.

Q. Now, you indicated that you investigated the possibility of busing from North Kingstown Junior High School to Monsignor clark via North Kingstown buses?

A. Yes, sir.

Q. Do you know how many North Kingstown buses make that trip?

A. One.

Q. Do you know what capacity that bus has?

A. No.

Q. Do you know how many places are available on that bus?

A. I don't know exactly. In the conversations I had with my transportation director, I can just give you an impression of that, that it was somewhere around 12 or 10 or 14 we might be able to do it. When we get up to 20 and 22, no, they couldn't accommodate us.

Q. Now, you estimated that it would cost $18,630 to contract for an additional bus?

A. Yes.

Q. Now, that is based on busing from Jamestown to Monsignor Clark and return?

A. Yes, sir.

Q. That is not based on busing from North Kingstown Senior High School to Monsignor Clark and return?

A. Correct.

Q. If you were to bus from North Kingstown Senior High School to Monsignor Clark and return, the cost would be considerably less, would it not?

A. I haven't even bothered computing it when I found it was not an alternative, really, you know, a viable one, didn't even bother to inquire about cost or even try to come close to an estimate.

Q. You did not investigate the possibility of hiring a fifth bus for the trip from North Kingston Senior High School to Monsignor Clark and return only?

Mr. DeLUCA. Objection.

A. We would take the youngsters over to North Kingstown High and our four buses that we now have, we would then hire another bus to take them from the high school, is that your question? That alternative has not been studied.

. . . . . .

A. Yes.

Q. Do you have a line-by-line item in your budget?

A. Yes.

Q. Line by line, it can be questioned and voted on at the town meeting?

A. Questioned but not voted on.

Q. Your bottom line?

A. How come you are spending so much for this, but when the action is taken it's on the total bottom line number.

Q. They can't delete a line item?

A. That is correct.

Q. If you put that line item in there, cost of transporting 22 students to Monsignor Clark, $22,000, they cannot delete that?

A. That is correct, that is my understanding.

FURTHER CROSS-EXAMINATION BY MR. SCHATZ

Q. Mr. LaMarche, do you know how far it is from Jamestown to Rogers High?

A. No. I haven't measured it systematically. I can give you a guess.

Q. Could you give us an estimate?

A. I'm going to say 12 to 15 miles.

Mr. SCHATZ. Thank you. Nothing further.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, et al	
VS	C.A. No. 77-0511
DR. THOMAS C. SCHMIDT, et al	

DEPOSITION OF ROBERT A. ANDREOTTI, a witness in the above-entitled cause, taken on behalf of the defendants, pursuant to notice, before Jeanne St. Hilaire, Notary Public in and for the State of Rhode Island, at the Department of Attorney General, 72 Pine Street, Providence, Rhode Island, on Tuesday, December 16, 1980, at 3 p.m.

APPEARANCES:

FOR THE PLAINTIFFS. . . . .DANIEL J. SCHATZ, ESQ.
SPECIAL ASSISTANT ATTORNEY GENERAL

FOR THE DEFENDANTS. . . . .REVENS & DeLUCA
BY: AMATO A. DeLUCA, ESQ.

FOR DEFENDANTS
JOSLYN SISSON and
LILLIAN TOSCO. . . . .JOSEPH E. MARRAN, JR., ESQ.

ROBERT A. ANDREOTTI

Being duly sworn, deposes and testifies in the following manner:

DIRECT EXAMINATION BY MR. DeLUCA

Q. Would you state your name for the record.
A. Robert A. Andreotti.
Q. You are employed by the school committee for Chariho Regional School?
A. That's correct.
Q. How long have you been so employed, sir?
A. Since August of 1977.
Q. And you are the superintendent of schools there?
A. Yes.
Q. Now, Mr. Andreotti, did you, at my request, prepare certain documents which purport to indicate the number of students that Chariho Regional School would be required to bus to the Monsignor Clark Regional School?
A. Yes.
Q. You have also in that document attempted to indicate different methods that you could use to provide transportation and the cost of each method, is that right, sir?
A. Yes.
Q. I'll ask you, look at this document, Mr. Andreotti, tell us if you can identify that.
A. Yes, this is the information I supplied to you.
Q. Now, that is entitled at the top "Transportation"?
A. Correct.
Q. And it makes reference to special education and its cost, vocational education, and there is an indication here that you have the area of vocational school is located on the Chariho campus and accordingly Chariho vocational stu-

dents ride on regular bus runs so there is no cost to transport the vocational education students. The total cost for the regular bus runs is $355,093 for the transportation of public school students, is that correct, sir?

A. That is correct.

Q. Then the cost indicated there of $1,972.74 is the cost to transport public school — a public school student for a year?

A. Yes.

Q. Or $1.10 pupil per day, the cost for transporting a public school student, is that correct, sir?

A. That is correct.

Q. You have also indicated on that sheet that there are presently 26 students who attend the Monsignor Clark that you provide books to, is that correct, is that how you came up with the number of 26?

A. That's correct.

Q. You anticipated that if you were required to provide transportation to Monsignor Clark, those 26 students who live within your district would ask for transportation?

A. That is the assumption.

Q. Right now you only have one such request?

A. That's correct.

Q. Now, underneath that there is a heading of Roman numeral I, and you have listed A, B, C, D, are those the methods of transportation that you would use?

A. Those are alternatives that would be available by virtue of the transportation contract.

Q. And the costs are also indicated there?

A. That's correct.

Q. Now, those costs include Prout Memorial students, is that correct?

A. That's correct.

Q. So that the total cost, for example, under paragraph A is $25,522.22. Even if we deleted the Prout students that cost would remain the same?

A. That's correct.

. . . . . .

Q. And that you have calculated as $1972 per pupil per year?

A. Yes.

Q. How many special education students are there in the Chariho School district?

The WITNESS. In the district or —

Q. How many special education students are provided services by the Chariho School district?

A. Approximately 150.

Q. How many of those are bused outside of the school district?

A. Presently I believe it's 14.

Q. Where are these students bused to, sir?

A. They are bused to South Kingstown, to Exeter, West Greenwich, to Narragansett, to the Warwick-Providence area, and one to New Haven, Connecticut.

Q. And where are the remaining 136 provided services?

A. At the Chariho facility itself.

Q. What is the busing cost for the 136 students bused within the district?

A. For 131 of those it would be the same cost as, if I may use the term, a regular student being bused, because they ride in the district transportation.

Q. That would be $1972?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, ET AL	)
V	) C.A. 77-0511
	)
DR. THOMAS C. SCHMIDT, ET AL	)

DEPOSITION OF GEORGE GRAHAM, TAKEN ON BEHALF OF THE PLAINTIFFS ON 4 MARCH 1981, AT 946 CENTERVILLE ROAD, WARWICK, RHODE ISLAND, BEFORE ALFRED GALLUCCI, NOTARY PUBLIC.

APPEARANCES:

SANDRA A. BLANDING----------FOR THE PLAINTIFFS

DAN SCHATZ----------FOR THE DEFENDANTS

4 MARCH 1981 — 2:50 p.m. GEORGE GRAHAM
SWORN

DIRECT EXAMINATION MISS BLANDING

1 Q Mr. Graham, you indicated that you are employed by the School Department of South Kingstown as the Superintendent of Schools, is that right?
A That's correct.

2 Q And how long have you been the superintendent in South Kingstown?
A Since December 1, 1971.

3 Q Now you were served with a subpoena today asking you to bring certain documents with you?
A Yes.

4 Q Did you bring those documents with you?
A Yes, I did. I have the current budget, '80-81.

5 Q Why don't we just mark these as we go through them.
A This is the special education contract, and it's with a Norman Sprague, or Wakefield Cab, and it's a five year contract, and expires as of June 1981.

6 Q Is this contract only for the transportation of special ed students?
A Except we are using that same contract to transport gifted students and in some instances we are using the contract to transport students who have their parents — have opted to send them to another school in the district, so the answer is 98 percent of the contract is for special education.

7 Q The contract we are referring to is between Wakefield Cab

. . . . . .

bus that you own yourself?

A That's correct.

150 Q And you own the bus?

A We own five in all.

151 Q What type of buses are they?

A The bus that is used for the transportation of the handicapped is described as a mini-bus. It originally was designed to seat 20 students but we had to take out about six seats to put in arrangements for wheelchairs, and also because of a lift, it takes some of the seats out, so that's one. Then we have four, 66 passenger buses. One we keep as a spare. One is used to supplement the Town and Country contract, which is Exhibit 2

152 Q 3.

A 3, allright. And one is used to transport students to and from Chariho Voc. Tech. School. Oh, is it all right if I at this time add something else?

153 Q Sure.

A Because thinking of the Voc. Tech. School, we have a regional school which we operate with Narragansett and Chariho and South Kingstown, and it's a school of fisheries, and it's to teach students to weld and to build boats and to learn fishing, so that they'd have an entry into the labor market at Point Judith, and we transport by the Wakefield Cab, which is Exhibit Number 2.

154 Q How many?

A. Four students from the high school to Point Jude Marina, where they have two hours of instruction in marine education.

. . . . . .

Development Center, et cetera, et cetera.

290 Q What's the capacity for those buses, please?

A About fourteen.

291 Q Would it be possible to bus special education students with non-special education students on the same vehicle?

A Yes. We do in some instances.

292 Q You do in some instances?

A Transport the handicapped youngsters on the regular buses, in the district. That would be on a 66 passenger bus. You have to understand when I'm using the term handicapped, I'm not referring to physically handicapped. We can't transport a physically handicapped youngster on a regular school bus. The kid in the wheelchair you can't. The kid that is paraplegic or you know, has some other crippling ailment, they can't be. But the learning disabled, or retarded youngster can get up on his regular bus stop with the regular kids in the morning and as long as he is going to that school, if his program is in the school he normally would attend, and in his bus route, then he would go to that school.

293 Q Would it be possible to bus a non-special education student on a bus that carries either physically learning disabled students?

A Yes.

294 Q Do you bus any student to North Kingstown High School.

A Yes, we are not currently not as of this date.

295 Q When did you bus to North Kingstown High School?

A Last year.

296 Q How many students?

A We had one, handicapped youngster. We transported to North Kingstown.

297 Q And that was transported by bus — strike that. That student was transported by bus?
A Yes, that's right.

298 Q How many vocational students are bused by the South Kingstown School District?
A 42.

299 Q And where are they bused to, please?
A They are bused to the Chariho Voc. Tech. High School in Wood River — is it Wood River Junction?

300 Q How many buses are used to bus those students?
A We take one bus from — we have three that pick them up in the morning and they rendesvous at the juncture of Route 138 and Route 2, and that bus then goes delivers them down to the school. Then there is a bus that delivers them home, brings them home and drops them off at their respective stops. We don't reverse in the evening. In other words, we don't go and have three buses take them. That's just in the morning because they start at 7 in the . . .

. . . . . .

A Right.

308 Q And how many students were bused in 1978 and '79?
A About the same number, about 42.

309 Q And how would the 1980-81 cost compare to that $240 per pupil per year cost?
A I would say 15 percent increase in it, considering you know that's inflationary.

310 Q While we're on the 1978-'79 school year, what was the cost to bus special education students out of the district in 1978 and '79? Would you refer to Exhibit 10, please? Referring to the '78-'79 school year, I believe you have indicated that 35 students were bused out of the district for special ed programs?

A Right.

311 Q And what was the cost to bus those students?
A 80,000 — oh, that's the total number of students, 80. Cost was 110,800.

312 Q I believe the cost for the special ed program —
A Well, it was 100,000.

313 Q 100,000.
A Right.

314 Q Now you have indicated that South Kingstown is involved in a cooperative program with what other school districts?
A Narragansett and Chariho.

315 Q And I believe you said four students were bused to Point Judith?
A Right.

316 Q Now is this a cooperative program as is defined under —
A It's a Voc. Tech. Program whereby — it's on a grant program where we submitted a grant, the three districts, Narragansett being the district of record, and requesting that we receive this amount of money. It was a competitive grant, had to compete for it and they accepted our program, which was a satellite program, run in this marina, at Point Jude, okay, at the Point Jude Marina, which is in South Kingstown, not in Point Judith which is in Narragansett, and we started that program, oh, I guess it was in October, and Narragansett, Chariho and South Kingstown all of the students participating in that program, and so we're transporting students to that regional program, much the same as we transport Chariho School, Voc. Tech. School.

317 Q And this is a cooperative program as that is defined under the General Laws, Title 16, Chapter 21.1?
A Yes.

318 Q What is the cost to bus those students to the marina?
A That's 27 cents a mile, 27.5, really. 27½ cents a mile.

319 Q How many miles are they bused?
A That's about four miles, so that would be eight miles a day, times 27- cents a mile.

320 Q And what is the cost of the buses?

. . . . . .

A No. I think that also this doesn't happen now, but it did two years ago, that our students, because Green Hills boundary is so close to Charlestown, that our Voc. Tech. students could walk over and get the Chariho bus, it was paid by Chariho School System, so it meant going to their bus stop and riding their bus, which they did at — it was just an agreement that they could do that.

347 Q Would it be fair to say that you entered into these cooperative agreements to economize, to save money?
A Yes.

348 Q Now the bus that is used to transport vocational students to Chariho, after it delivers the student to Chariho in the morning, does the bus stay there until the afternoon?
A No. The bus comes back to the — eventually back to the maintenance office because we have maintenance bus drivers, and so those men that have maintenance work that they're assigned.

349 Q Where is the maintenance office located?
A It's located on Columbia Street in Wakefield.

350 Q How far is that from Monsignor Clark?

A Oh, about, I'd say two miles. That bus picks up elementary kids by the way, you know, after, from Matunuck, then it goes on to — it picks up our kids after it delivers to Chariho.

351 Q Would it be possible to utilize that bus to transport students from Chariho to South Kingstown on its return trip?

MISS BLANDING: Objection.

A That bus goes and picks up elementary kids after it delivers to the Chariho, because they start at 7, by the time the bus gets back then it begins to pick up our elementary kids to deliver them to Matunuck.

351 Q What time are those children delivered?

A Well, they're delivered there at 9 o'clock. They start at nine. They get there about quarter of nine in the morning.

352 Q And what time does Monsignor Clark begin?

A Monsignor Clark, well, about 9 o'clock.

353 Q So would it be fair to say that students could be transported to the Chariho Regional School on the buses, morning return trip, that is the vocational bus, and transported to Monsignor Clark?

MISS BLANDING: Objection.

MR. SCHATZ: I'm just asking if it could be done. Perhaps we should go off the record.

MISS BLANDING: Even when there is an objection, you still answer.

WITNESS: Oh, I still answer? All right.

A Yes.

354 Q Your answer is yes, it would be possible?

A Sure. From that district, that school area. In other words, the Monsignor Clark kids that live in the Matunuck area could. . . .

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, ET AL	
V	C.A. No. 77-0511
DR. THOMAS C. SCHMIDT, ET AL	

DEPOSITION OF DR. EDWARD COLEMAN, witness in the above-entitled cause, taken on behalf of the defendants, pursuant to Notice, before Nancy J. Gonsalves, Notary Public in and for the State of Rhode Island, at 72 Pine Street, Providence, Rhode Island, on Tuesday, February 10, 1981, at 3:00 P.M.

APPEARANCES:

FOR THE JAMESTOWN AND CHARLESTOWN SCHOOL COMMITTEES ..... REVENS & DeLUCA
BY: AMATO DeLUCA, ESQ.

FOR THE DEPARTMENT OF EDUCATION ..... DANIEL J. SCHATZ, SPECIAL ASSISTANT ATTORNEY GENERAL

DR. EDWARD COLEMAN

Being duly sworn, deposes and testifies in the following manner:

DIRECT EXAMINATION BY MR. SCHATZ

Q. Would you state your full name?
A. Edward J. Coleman, Jr.
Q. And how are you employed?
A. Superintendent of schools, Johnston, Rhode Island.
Q. And how long have you been so employed?
A. Eighteen months, nineteen months now.
Q. What are your responsibilities as Superintendent?
A. Overall supervision and instruction of programs within the School Department.
Q. As part of your responsibilities, are you in charge of the arrangements of transportation within the school system?
A. I'm the overall supervisor for that. I have a transportation manager who assists me in providing transportation service.
Q. Who is that?
A. Mike Ianucelli.
Q. Dr. Coleman, did you bring with you figures on the number of students and the cost of busing those students?
A. I have some figures relative to the '78-'79 and . . .

. . . . . .

district?
A. During the '78-'79 school year.
Q. Is that an accurate figure?
A. Yes.

Q. What is the total cost of busing students within the Johnston school district, and by this I mean the cost of busing students excluding vocational and special ed?

A. I don't have a breakdown separating the vocational at this time for this year. I don't know if you want this on the record. I've gone to a completely new operation and a new method of payment and new method of — we contract per bus per unit. During the operation, they service many runs to schools. Those buses service the elementary, the middle, the high and voc runs, so we have to take and break down mileage per day and then divide it into the cost per day per bus in order to achieve the answer you want, and we haven't had an occasion to do that because we don't do that until we file our annual report at the end of the year.

Q. Now, are these buses used to bus both within and outside of the school district?

A. Yes. Special ed, there are three buses that travel, as I indicated, within the district for special ed. There are three that go out of the district. There are 6 of the 21 contracted buses, 6 of them are used exclusively for special ed. 15 buses are used for the remaining transportation, including the vocational ed.

Q. And would some of these 15 buses be used to transport to St. Thomas and the Cranston-Johnston Regional?

A. Yes, they would serve as both public and parochial the same day and bus them in the same way.

Q. Both within and outside the Johnston school district?

A. Right. It's a complex question to answer. A bus, to give you an example, a bus may make a high school run, may make a middle school run and may make a run to St. Thomas for the morning entry period. And in fact, I know that one of the St. Thomas buses returns to the high school and makes three shuttle runs to the voc tech pro-

gram. You have a bus that services three different areas that we're discussing here, and it's one bus. In order to give you an accurate answer, I would have to analyze the time, the mileage, and so forth, to apportion the cost of the 119.50 that that cost is costing me per day.

MR. De luca: How much a day?

THE WITNESS: We contract for 119.50 a. . .

. . . . . .

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, ET AL)
)
V)CA 77-0511
)
DR. THOMAS C. SCHMIDT, ET AL)

DEPOSITION OF VINCENT TRAINOR, JR., TAKEN ON BEHALF OF THE PLAINTIFFS ON 21 JANUARY 1981 AT 946 CENTERVILLE ROAD, WARWICK, RHODE ISLAND, BEFORE ALFRED GALLUCCI, NOTARY PUBLIC.

APPEARANCE:

AMATO A. DE LUCA, ESQ. -------- FOR THE PLAINTIFFS

DAN SCHATZ, ESQ. ---------- FOR THE DEFENDANTS

21 JANUARY 1981

VINCENT TRAINOR, JR.
SWORN

DIRECT EXAMINATION BY MR. DE LUCA

Q And by whom are you employed?
A The Newport School Department.
Q What is your position there?
A Superintendent of Schools.
Q How long have you been Superintendent of Schools in Newport?
A Approximately six and a half years.
Q Have you brought with you, Mr. Trainor, records pursuant to a subpoena that was issued by Sandra Landy concerning the current budget for the City of Newport, School Department?
A I have.
Q And do you have all school bus contracts, current school bus contracts, for the city of Newport, School Department?
A I have.
Q Could I see those documents please, sir?
A That is the current contract — excuse me, current budget. These are bus contracts, current as well as previous.
Q Why don't you identify the other documents for us in order to save some time, Mr. Trainor, that you have with you.
A Okay. I have two school policies involving transportation.
. . .

. . . . . .

is non-public, wouldn't it be fair to say that those buses could have been utilized to provide transportation for the public school students?
A You mean those who were not being bused, such as in the secondary?

Q Let's assume for a moment that you decided that the first measure to be taken is to eliminate transportation for all non-public school students both within and outside the district, wouldn't it be fair to say that those buses could now be utilized to provide transportation to public school students?

A Well, it's a difficult question to answer the way you have it phrased because the same buses obviously are being utilized to transport public school, and then they make another run and they transport non-public school at a different time. Now that doesn't cost us any more money with the exception of gas because our buses can go for the same price per day up to a maximum of 50 miles without costing us any additional money. So the non-public school students normally are transported so that they will arrive at their schools prior to 9:00 o'clock, and the others go in earlier.

Q Wouldn't it be fair to say that if you utilized the second run, I assume that that's what you are referring to, the second run is for the non-public school students, if you. . . .

. . . . . .

Q Number two on the Questionnaire, the number of non-public students bused outside your district and the cost of busing those students, to each type of school indicated, they have parochial and religiously affiliated schools, the number of students was 127; independent non-religious schools 46, total 173, are those numbers still accurate?

A I would say they are.

Q What is the independent non-religious?

A I was going to correct that. That is the new school. I thought it was religiously affiliated but it is not.

Q The new school is not?

A Right.

Q And the cost for the parochial religiously affiliated schools is $12,887.00. Just taking that figure for now, okay, is that still the correct cost?

A I would believe that at that point in time, it was.

Q But I mean for '80-81?

A Oh, '80-81, no. Amount would be up considerably.

Q What would be the cost for '80-81?

A The best I will be able to give you I think at this point in time is an approximation.

Q Okay.

A I hesitate even to give you that because I'm afraid of the accuracy of it.

Q Could you give us a minimum figure?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN)
SCHOOL COMMITTEE, ET AL

V) CA 77-0511

DR. THOMAS C. SCHMIDT, ET AL)

DEPOSITION OF STEPHEN O'HAIRE, TAKEN ON BEHALF OF PLAINTIFFS ON 28 JANUARY 1981, AT 946 CENTERVILLE ROAD, WARWICK, RHODE ISLAND, BEFORE ALFRED GALLUCCI, NOTARY PUBLIC.

APPEARANCES:

AMATO A. DE LUCA, ESQ. -------- FOR THE PLAINTIFFS

DAN SCHATZ ---------- FOR THE DEFENDANTS

28 JANUARY 1981
3:15 p.m.

STEPHEN O'HAIRE
SWORN

DIRECT EXAMINATION MR. DE LUCA

1 Q You're employed by whom?
A Warwick School Department.
2 Q What do you do for them?
A Transportation manager.
3 Q Did you bring certain documents with you that you were requested to bring with you pursuant to a subpoena which was served on Domenic DiLuglio, Superintendent of Schools, City of Warwick?
A I did bring certain documents.
4 Q Would you enumerate them for us, please?
A Warwick School Department Program Budget for fiscal year 1980-81. The contracts between United Truck and Bus Service Company and Warwick School Department. Some information which I have compiled which I feel might be relevant to the deposition. And some various other information, budgetary information.
5 Q What about school committee minutes?
A No, I have no school committee minutes.
6 Q The subpoena requested them, didn't it?
A It's my understanding through conversation with one of our. . .

. . . . . .

RA-38

WARWICK SCHOOL DEPARTMENT

REGULAR EDUCATION — 9/79-9/80 WITHIN DISTRICT

I) PUBLIC SCHOOLS

1) High School	-2,492
2) Jr. High School	-2,063
3) Elementary School	-2,490
4) Total	7,045

5) Cost = $593,700.

($483,368. - buses;)
($110,332. - fuel)

II) NON PUBLIC - PRIVATE AND PAROCHIAL

1) High School	-369
2) Junior High School	-785
3) Total	1,154

4) Cost = $170,689.

($140,603. - Buses;)
($30,086. - Fuel)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE, et al	
VS	C.A. No. 77-0511
DR. THOMAS C. SCHMIDT, et al	

DEPOSITION OF EDWARD MICHAEL DENNING, a witness in the above-entitled cause, taken on behalf of the Defendant, pursuant to notice, before Karen A. Gallagher, Notary Public in and for the State of Rhode Island, at the offices of Revens & DeLuca, 946 Centerville Road, West Warwick, Rhode Island, on Friday, January 16, 1981 at 3:30 p.m.

APPEARANCES:

FOR THE PLAINTIFF . . . . DAN SCHATZ
ASSISTANT ATTORNEY GENERAL

FOR THE DEFENDANT . . . . REVENS & DE LUCA
BY: LEONARD DE LUCA, ESQ.

PROCEEDINGS

EDWARD MICHAEL DENNING, Sworn

DIRECT EXAMINATION BY MR. DE LUCA

Q. Please identify yourself for the record.
A. Edward Michael Denning.
Q. Spell your last name.
A. D-E-N-N-I-N-G.
Q. What is your title?
A. Director of Personnel for the Coventry School Department.
Q. You're here, Mr. Denning, in response to a subpoena that was served upon the Coventry School Committee; is that correct?
A. Correct.
Q. You are aware of that?
A. Yes.
Q. We wanted a person to appear here today that has knowledge or information concerning one, the policy of the said School Committee regarding busing of non-public school students outside of the school district. Do you have knowledge of that?
A. Yes, I do.
Q. And knowledge concerning requests by parents for the provision of busing. Do you have information concerning that?

. . . . . .

(DOCUMENT ENTITLED, "QUESTIONNAIRE," MARKED PLAINTIFF'S EXHIBIT NO. 3 FOR IDENTIFICATION.)

Q. I show you what has been marked Plaintiff's Exhibit No. 3 for identification. Do you recognize that, Mr. Denning?
A. Yes, I do.
Q. That is the questionnaire that the Town of Coventry filled out; is that correct?
A. Yes, it is.
Q. And returned it to the Department of Education?
A. Yes.
Q. Now, directing your attention to what has been marked as Plaintiff's Exhibit No. 2 for identification, under Coventry, we move along laterally and under the heading, number of students, public schools, will you tell us what the number is there?
A. Three thousand four hundred and sixty.
Q. That is the number being bused to public schools in 1978-'79; is that correct, sir?
A. Yes, sir.
Q. Now, referring to what has been marked as Plaintiff's Exhibit No. 3 for identification, you indicated, in answer to question number three, which is the number of public school students bused within your district and the cost of busing those students, and the cost there is indicated as what, sir?
A. $282,548.
Q. We have marked the contract between the Pawtuxet Valley Bus Lines, Inc., and the Coventry School Committee as Plaintiff's Exhibit No. 1 for identification and that contract, as I understand it, Mr. Denning, was in effect when this questionnaire was answered by the Town of Coventry; is that correct, sir?
A. Correct.

Q. All right, you testified that the cost of transporting students in 1978-'79, for 3,460 students was $282,548; is that correct?

A. I read from the document, yes.

Q. That was filled out by the School Committee of the Town of Coventry; wasn't it?

A. Yes.

Q. That was the cost then?

A. Yes.

Q. Is that correct?

A. Unless an error was made in the calculations.

Q. Let me ask you this then, is there an error made in that calculation?

A. I don't know.

Q. Does it appear in error?

. . . . . .

Q. Which, in round figures is $67,000; is that correct?

A. Correct.

MR. SCHATZ: Would you read back the three school types, I'm having trouble keeping track of everything.

(The question referred to was read by the stenographer.)

Q. Would you accept my calculations?

A. Yes.

Q. How many students, how many nonpublic school students are transported to a religiously affiliated regional school?

A. Twenty.

Q. What school is that?

A. Notre Dame Regional School.

Q. Where is that?

A. West Warwick.

Q. Yes, but where is it in West Warwick?
A. I don't know the exact location.
Q. Do you know, is one bus used to transport these 20 students?
A. One bus.
Q. What time are they picked up in the morning?
A. Between 8:15 and quarter of nine.
Q. Why such — that's a half an hour. Why —
A. Why such a long length of time? Because they have to be picked up at different sites throughout Coventry which is very expansive.
Q. Is it the same bus everyday?
A. Yes.
Q. Which bus is it?
A. The bus number?
Q. Yes.
A. I don't know right now.
Q. Is that bus also used to transport public school students?
A. Yes.
Q. What time do the public school students use the bus?
A. Previous to this.
Q. They go in earlier?
A. Correct.
Q. Were arrangements made with Notre Dame Regional School concerning the transportation of these 20 students?
A. Yes, Notre Dame submits — we request from them, a list of students that will be attending, living in Coventry, who require transportation, then they send a list back to us.
Q. How often do you communicate with Notre Dame concerning these students?

. . . . . .

Q Do you have any knowledge of disciplinary problems on the bus to the Notre Dame School?

A. No, I don't.

Q. You don't have any?

A. None that are outstanding, that have come to my attention. I also have a reporting system where if a driver reports something, he is supposed to note it and it should come to my office. I don't have any specific problems.

Q. Could you review your records so if there was a disciplinary problem, it was reported, which the bus driver is supposed to do, and you would have a record of this?

A. Correct.

Q. Would you search your records to determine whether or not you have received any reports concerning students on that bus that are going to Notre Dame?

A. Sure.

Q. And would you provide that information to us?

A. Oh, yes.

Q. Is Notre Dame an elementary school?

A. Correct.

Q. The town School Committee has indicated on Exhibit No. 3, question number four, the number of students bused to religious schools within your district and the cost of busing the students. The number of students is 445. Is that still the same number?

A. Correct.

Q. The cost is $61,689; is that correct?

A. Correct.

Q. How was that figure determined?

A. Basically by subtracting this from this. I mean, the total cost figure of roughly $350,000 and subtracting this from that.

Q. If you add those two together, you come up with $344,237 which leaves a deficit. This is a deficit in terms of —

A. Of $6,000.

Q. Yes.

A. Right, when it was prepared, the year had not quite ended yet. We were aware there was a possibility of costs increasing.

Q. So, if the cost for transporting these 445 students is $61,689, the remaining $6,000 is cost for what?

A. The increase in the cost for mileage, for gasoline, fuel adjustment.

Q. The number of nonpublic students bused outside your district and the cost of busing those students to each type of school indicated, this is question number two on Exhibit No. 3. You then have 20 as the number of students and you have indicated that the cost was. . . .

. . . . . .

schools, bused outside, children bused outside. You have 20 as the total and a cost of $1,296. That's incorrect? It should be $129.60; is that correct?

A. Yes.

Q. If you take the 20 students that you bus, divide that into 2,592, it comes out to to $129.60.

MR. SCHATZ: I'll stipulate that the arithmetic there, there appears to be an error on table two and the error being 1,296 should read 129.6.

Q. Do you understand that, Mr. Denning?

A. I understand what you're talking about. I wasn't sure.

Q. But we can agree, according to these figures, the cost of transporting these students to Notre Dame, the cost per pupil, at least right now, appears to be $129.60; is that correct?

A. Correct.

Q. As I understand your testimony, it's Pawtuxet Valley Bus Lines that gave all of this information on these documents?

A. Correct.

Q. Now, your special education children, they are transported how?

A. By the Coventry schools.

Q. Well, how are they transported? Who transports them?